THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

THE DISCUSSION OF PRESCRIPTION IN *Angus* v. *Dalton*.[1]—(*From Professor Gray's Lectures.*)—The practice of authorizing the jury to find a lost grant of an easement or other incorporeal hereditament was introduced by the English judges to avoid the inconvenience resulting from the fact that the presumption raised by length of time failed if the disputed right was shown to have originated since the time of legal memory. This presumption of a lost grant, raised by an enjoyment of the easement under the proper conditions for twenty-years,—a period adopted by judicial legislation from the analogy of the Statute of Limitations,—was at first a pure presumption of fact, rebuttable by proof that there had been no grant.[2] But the fiction was so strong that the judges were always somewhat uneasy under it, and as time goes on we find it gradually changing and hardening into a presumption of law.[3] In the midst of this process came the Prescription Act[4] (1832), which left the subject of prescription in a state of arrested development. For the next fifty years, during which the courts of this country were working out the subject without statutory aid, English decisions were chiefly under this statute, so that little was heard there of the theory of a lost grant. But ten years ago the case of *Angus* v. *Dalton* brought up a *casus omissus* in the Prescription Act; and the judges were therefore forced to take up the law in the transition period where it had been left when that act was passed, and to decide the case on common-law principles.

This is probably the explanation of the wide difference of opinion noticeable among the judges in *Angus* v. *Dalton*. We find the view advanced, that twenty years is an absolute bar, on the analogy of the Statute of Limitations (this theory, advanced by Lush, J., in the Queen's Bench Division, did not meet with general favor among the other judges; it is in substance the prevailing doctrine in this country); that it raises a mere presumption of fact, rebuttable by proof that there never was a grant (a view of Cockburn and Mellor, JJ., in the Queen's Bench Division, and of Brett, L.J., in the Court of Appeal); that the presumption is one of law, which can be met, not by showing that there was no grant, but only that there could have been none (the view of the majority of the Court of Appeal). As to the particular question raised by the case, the right of support for buildings, the judges are evidently embarrassed by the attempt to distingush it from such a case as *Webb* v. *Bird*,[5] where it was held that no prescriptive right to the

[1] 3 Q. B. D. 85; 4 Q. B. D. 162; 6 App. Cas. 740.
[2] *Darwin* v. *Upton*, 2 Wms. Saund. 175, note.
[3] See remarks of Lord Ellenborough in *Bealey* v. *Shaw*, 6 East, 208, 215; *Balston* v. *Bensted*, 1 Camp. 463, 465.
[4] 2 and 3 W. IV. c. 71, § 2.
[5] 13 C. B. N. S. 841.

access of air to a wind-mill could be gained, because of the impossibility of interfering with the user. They rely chiefly on the settled law in regard to lights, the peculiarities of which are in many ways not unlike those of support; but they evidently feel a difficulty in dealing with either case on principle, a difficulty which is frankly expressed by Fry, J., in the House of Lords. In the United States the doctrine of acquired rights to light is generally rejected, following *Parker* v. *Foote*,[1] and the right to support would probably be treated in the same way.

In regard to the general doctrine of prescription, the question of *Angus* v. *Dalton* really comes down to this: is the presumption one of law or fact? The view of the majority in the Court of Appeal — that of a presumption of law, rebuttable only by proof that no grant could have been made — is ingenious and plausible; but it is, as Brett, L. J., points out, hardly more than an indirect and rather artificial way of reaching the conclusion of Lush, J., and of many of the American courts. And this conclusion — an arbitrary rule that twenty years' enjoyment under the proper conditions gives an absolute right, on the analogy of the Statute of Limitations — is that to which it seems that the law must ultimately come. Though a pretty strong instance of judge-made law, it is reasonable and satisfactory, and accomplishes the eminently desirable result that two subjects so similar (the acquisition of rights by prescription and under the Statute of Limitations) are put on the same footing.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

CHATTEL MORTGAGES — DEFINITENESS OF DESCRIPTION. — A chattel mortgage described the property as "all my crop of corn, cotton, and other produce that I may raise for the year 1884, in Faulkner county." *Held*, that this description is sufficiently definite to make the record of the mortgage constructive notice to purchasers of the crop. *Johnson* v. *Grissard*, 11 S. W. Rep. 585 (Ark.).

A description which will enable a stranger, aided by such inquiries as the mortgage itself suggests, to identify the property, is sufficient. But if, after reasonable inquiry, the subject-matter of the mortgage is still indefinite, the record is no notice to purchasers. Jones on Chattel Mortgages, §§ 54–5. Thus a mortgage of all the crops raised by the mortgagor in his county for three years is too indefinite. *Muir* v. *Blake*, 57 Iowa, 662.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW. — The Rhode Island statute authorizes the confinement of the insane in State institutions by the parents or guardians, etc., on presentment to the superintendent of a certificate "from two practising physicians of good standing," that such person is insane. None of the modes provided for procuring discharge can be resorted to as of right in his own behalf by the person confined. *Held*, this statute violates Const. R. I., art. 1, § 10, providing that every person shall be at liberty to speak for himself, and no person shall be deprived of life, liberty, or property, unless by the judgment of his peers or the law of the land. As a legal proceeding in which a person proceeded against, if concluded thereby, has not an opportunity of defending himself, is not "due process of law," the statute also violates Const. U. S., Amend. XIV. *In re Gannon*, 18 Atl. Rep. 159 (R. I.).

[1] 19 Wend. 309.